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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG Defendant. MARY SUE HUBBARD, Intervenor	CASE NO. C420153 REPLY TO OPPOSITION TO MOTION TO UNSEAL FILE DATE: NOVEMBER 9, 1988 TIME: 9:00 A.M. DEPT: 56

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I.

INTRODUCTION

1. The Church of Scientology argues that the motion should be denied on the claim that certain information contained in the file is privileged or involves rights of privacy; collateral estoppel does not apply to Defendant's other lawsuits; the sealing order was part of a bargained for settlement, and the matter had been foreclosed by UNITED STATES v. ZOLIN, (9th Cir.) 809 F.2d 1411.

2. As will be set forth below, Scientology has failed to meet its burden of establishing which documents are subject to what privileges, and what documents violate what right of privacy.

3. Collateral estoppel does apply, but it is not necessary for this court to make that determination. This court need only see that the judgment in the herein case has the potential to have collateral estoppel effect and leave it for the other four trial courts to determine the legal effect.

4. As set forth below, bargained for gag orders and settlements that remove discoverable evidence from third parties are against public policy. And contrary to the Church of Scientology's assertion, as more fully explained below, The Ninth

5. Not only has Mr. Corydon presented good cause and relevance for discovery, and the right to inspect this file in order to defend against four Scientology related cases, but the opposing papers have admitted that this file was once open to the public. Thus, the resealing of the same violates the First Amendment. COALITION AGAINST POLICE ABUSE v. SUPERIOR COURT (1985) 216 CR 614, 170 Cal.App.3d 88. Thus, the original order was not valid.

II.

PLAINTIFFS BY SETTLEMENT CANNOT EXCLUDE RELEVANT DISCOVERY FROM THIRD PARTIES

6. The thrust of the opposition to unseal the file is that Scientology bargained for a sealing order in their settlement of the cross-complaint of Gerald Armstrong. This is as set forth in the opposition's attached reporter's transcript of December 11, 1986.[1]

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[1]. Scientology attempts to suggest to this court that when the complaint was tried it resulted in findings against Defendant Armstrong that he had converted documents at issue and had invaded Mrs. Hubbard's rights to privacy.

It is these very misstatements by Scientology that create the need for the obtaining of the actual decision of Judge Breckenridge. The copy available (although not verified) states that Judge Breckenridge made findings supporting the actions of Mr. Armstrong, and particularly that Scientology uses confessional information of its followers against them should they leave the organization, and violate and abuse their members civil rights, and harass and abuse people they perceive as enemies pursuant to "Fair Game" doctrine.

All of these issues are of extreme importance to Defendant Corydon in defending all four actions brought by Scientology and Scientologists. Breckenridge found that Scientology's founder was virtually a "pathological liar" and that his personality is reflected in his alter ego "the Church of Scientology".

These findings are supportive of Mr. Corydon's opinions that Scientologists are "drilled to lie", statements for which he has

9. As stated in the moving papers, in CHAMPION v. SUPERIOR COURT, 247 CR 624, the appellate court recently stated that sealing orders are disfavored even when they are based upon stipulation of the parties.

10. More controlling is MARY R. v. B. & R. CORP., 149 Cal.App.3d 308, 196 CR 871 (1983). There, like the case now before the court, pursuant to a settlement of a civil lawsuit, the parties stipulated to the sealing of the file and a gag order on the parties from discussing the matter. This stipulation, as with the case herein, then became an order of the court.

11. The Attorney General, wishing to interview the Plaintiff, then brought a motion to set aside the order and the court denied the same. There, as here, the opposing party argued that the gag order was part of the bargained for settlement.

12. The court noted that the attempt of obtaining the gag order as part of the settlement, and the court granting the same, was to give a "Judicial stamp of approval to a ploy obviously designed by the physician (defendant) to aid him to avoid professional regulation inherent in his securing and keeping a professional license".

13. The court stated it was against public policy for an impartial justice to secrete evidence. Such a stipulation was not only against public policy but was similar to an "agreement to conceal judicial proceedings and to obstruct justice." Just

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of Points and authorities).

as the Board of Medical Quality Assurance had a right to investigate the doctor in MARY R. , Bent Corydon has the right to investigate and examine documents to defend himself against the four current lawsuits brought by Scientology and its officers.[3]

III.

CORYDON HAS ESTABLISHED GOOD CAUSE

14. Contrary to Scientology's contentions, Mr. Corydon has set forth good cause for discovery. It is necessary to the defense of all four Scientology-related actions that he may be able to prove the existence of Scientology's "Fair Game" policies. Judge Breckenridge made such findings. Further, the declaration of Vicki Aznaran establishes the destruction of Scientology's documents by Scientology's legal department. In order to validate her testimony, it becomes necessary to find what discovery orders were made by Judge Breckenridge.

15. Scientology argues that Bent Corydon's wife saw a stack of documents that she understood came from the Armstrong case. This understanding of Mary Corydon does not establish these were the documents from the Armstrong case. It is the undersigned's understanding that these were documents seized by the FBI from Church of Scientology concerning the criminal arrests and convictions of Scientologists for obstructing justice (see UNITED

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[3]. This court can take judicial notice of Scientology's history of "Fair Game" against its enemies (see UNITED STATES v. HELDT, 668 F.2d 1238 1981). When documents relate to matters of public interest, protective orders should generally be denied. KRAUSE v. RHOADS, 671 F.2d 212 (National Guard shooting at Kent State).

admissable evidence on his behalf. Nor does any prior review of the file the same as obtaining necessary documents or getting certified copies of the same.

16. However, Scientology's opposition does establish that at one time the documents in the court file were open to public view. This was even noted by Judge Breckenridge as stated on page 7 of the December 11, 1986 reporter's transcript (attached to opposing papers): "Of course, there have been innumerable people in the interim, who have come forward and examined the file..."

17. In SEATTLE TIMES COMPANY v. RHINEHART (1984) 104 Supreme Court 2199, the United States Supreme Court held that once documents were opened to public view, they could not be subjected to a gag order.[4]

18. In COALITION AGAINST POLICE ABUSE v. SUPERIOR COURT (1985) 216 CR 614, 170 Cal.App.3d 88, the California Appellate Court concluded that a gag order could only be placed on documents never before released to the public, but that once released, no gag order could be placed on the same. Therefore an order that documents be returned and kept sealed, after being available to the public prior thereto, was not valid. Once publicly disclosed, a sealing order violates the First Amendment. The lack of a prior protective order was indicated to be an

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[4]. Further, in Rhinehart, the United States Supreme Court said that such gag orders must result from a compelling government interest and be "narrowly drawn".

"implied consent" to public disclosure.

19. Thus, Judge Breckenridge's ruling sealing documents that were already available to the public was an order in violation of Coalition and Seattle Times and is thus not valid.

20. While Champion, supra, Coalition, supra, and Seattle Times supra, all dealt with the right for the public to have access to court documents, files, and review the judicial process, Bent Corydon is more than just a curious member of the public. He is not even solely in the role of a Plaintiff seeking to prove his case against the Church of Scientology, but is a man defending himself against an onslaught of Scientology-related litigation designed to crush him.

21. We contend that these very lawsuits are part of Scientology's "Fair Game" policies to destroy its critics.[5]

IV.

OTHER CASES CITED BY SCIENTOLOGY ARE NOT RELEVANT

22. Scientology primarily relies on UNITED STATES v. ZOLIN 809 F.2d 1411. On page three of the opposing papers, Scientology asserts that this case upheld the sealing order. This false citation is repeated on pages 4 and 5.

23. In fact, the ruling in Zolin (which is attached hereto) was to the contrary. There, the IRS initiated an action to compel the Superior Court Clerk to produce thirteen sealed documents. Scientology claimed that each were privileged and

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[5]. Mr. Corydon is a former Scientologist who wrote a book called "L. Ron Hubbard, Madman or Messiah?"

was to the contrary. There, the IRS initiated an action to compel the Superior Court Clerk to produce thirteen sealed documents. Scientology claimed that each were privileged and that the action by the government was not in good faith. The district court released five of the documents. The other eight were ruled either irrelevant or privileged. At no time did the court indicate that the actual sealing order was a bar to the production. On the issue of privilege, the appellate court held that the Church of Scientology had to meet the burden of demonstrating the existence of the same, and that further they had lost the attorney-client privilege by submitting documents voluntarily to Mr. Jerry Armstrong.

24. The only portion of the decision favorable to Scientology was the upholding of attorney-client privilege as it related to a tape recording where Scientology and its counsel planned a tax fraud. The court held that under federal law there must be evidence independant of the tape itself to establish the "crime-fraud" exception to the attorney-client privilege. We do not believe that to be California Law and we note that Zolin has now been accepted by United States Supreme Court as stated in footnote 1 of the opposing papers.

25. The opposition papers cite SAN BERNARDINO UNITED SCHOOL DISTRICT v. SUPERIOR COURT, 190 Cal.App.3d 233 for the grounds that Mr. Corydon cannot expect the court to reverse a decision made by the trial judge after benefit of full presentation of the facts. This case is not on point. It dealt with the appellate

court.

26. Scientology relies on LYNCH v. GLASS, 44 Cal.App.3d 943 for the proposition that the decision in the herein case will not have a collateral estoppel effect in the other litigation involving Mr. Corydon.

27. In fact, the case holds otherwise. First, the Church of Scientology is a Plaintiff in two of the actions. In the other two, the Plaintiffs have plead they are Presidents of Scientology corporation (see Exh. D of moving papers).

28. Lynch held that collateral estoppel is designed to prevent the relitigation of issues and to maintain judicial harmony of decisions. Collateral estoppel, according to the court in Lynch applies to not only the parties, but to non parties who are in privity. The court then went on to give numerous examples of privity which would include members of party organizations and non parties whose interests were aligned with that of the parties.[6]

29. The court noted that when a party acts in a representative capacity for non party, collateral estoppel is applied against the non party. TEITELBAUM FIRST, INC. v.

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[6]. This court need not decide or rule upon the admissability or the collateral effect of the Breckenridge decision in any of the four other cases. This court need only see that the decision may be admissable and that it may lead to the discovery of admissable evidence in order to see that Bent Corydon's rights to a defense necessitate obtaining a certified copy of Judge Breckenridge's decision and the ability to inspect this file.

DOMINION INS. COMPANY, LTD., 58 Cal.2d 601. And it applies against residents whose common interests have been represented by their municipality. RYNSBURGER v. DAIRYMENS FERTILIZER COOP., INC. 266 Cal.2d 269, 277-278.[7]

30. Scientology further argues that the "joinder" was not timely brought. The court should realize that while the papers filed by Toby Plevin are entitled "joinder", they are actually nothing more than additional papers filed in support of Bent Corydon. Mr. Corydon is the party seeking discovery and the additional papers were filed by other attorneys of his defending him from Scientology in litigation different than that from which the undersigned represents Mr. Corydon.

31. Scientology further argues that there are issues of "privilege" and "privacy." The burden of such claims is on the party asserting the same, UNITED STATES v. ZOLIN 809 F.2d 1411 (see attached). Absolutely no evidence has been given establishing that there are any privacy issues or privilege issues involved. In fact, the December 11, 1986 settlement transcript attached to the opposing papers indicates that the sealing order came about for no other reason than Scientology bargaining for the same as part of the settlement (As indicated above, such orders are not prohibitive against third parties who have a need to review said files, see Mary R. supra).

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[7] Black's Law Dictionary defines "privity": "a connection between parties (as to some particular transaction)...a mutual or successive relationship to the same rights of property; the relationship between privies whereby they succeed to the same legal right or duty derived from a common source."

bargaining for the same as part of the settlement (As indicated above, such orders are not prohibitive against third parties who have a need to review said files, see Mary R. supra). Scientology has also argued this in their opposition.

32. Certainly such claims cannot prevent the discovery of a certified copy of Judge Breckenridge's decision, nor orders relating to discovery matters. If Scientology is claiming any privileges or rights of privacy, it must set forth what documents same is being asserted to, and the basis for the same. It cannot apply such arguments against the entire file.

V.
CONCLUSION

33. It should be noted that the firm of Bowles & Moxon is listed as Attorneys for the Church of Scientology of California. The opposing papers were signed by Mr. Bowles. Mr. Bowles and Mr. Moxon are attorneys of record in all four Scientology lawsuits now pending against Mr. Corydon that have been described in the moving papers. Yet it is Mr. Bowles and Mr. Moxon who appear before this court arguing that Mr. Corydon should not be able to examine this file to see if there is information, evidence, or documents that may help Mr. Corydon defend himself against this litigation onslaught.[8] We attach hereto a copy

[8]. Simultaneous with this settlement and order, Scientology entered into numerous settlements with other former members which contained agreements to not cooperate voluntarily with anyone in litigation adverse to Scientology. This, too, has interfered with Mr. Corydon's abilities to defend himself. It would be a denial of equal protection of the laws and an obstruction of justice if ultimately either the sealing orders in this case or these agreements were ever upheld to prevent Mr.

of the fourth suit against Mr. Corydon filed in Washington D.C..

34. The sealing order was not based upon arguments of privilege or privacy, and no evidence of the same has been asserted in the opposing papers, but rather by a bargained for settlement agreement. This is clear from the opposing papers themselves. Such agreements are void as against public policy (Mary R. supra and Champion,supra) and its applied to Mr. Corydon creates an obstruction of justice.

35. Therefore it is respectively submitted that this court allow Mr. Corydon to inspect the files and to copy those documents necessary to his defense. Mr. Corydon will submit to any orders of the court relating to the same that this court deems appropriate.

Date:_____

Respectfully Submitted,

PAUL MORANTZ
A PROFESSIONAL CORPORATION
Attorney for Defendant Corydon

Corydon from preparing his defenses.

accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States" to the disputed land. 28 U.S.C.A. § 2409a(g) (West Supp.1987). The claims against the United States accrued as soon as it became clear to Lee, Eklund, and Carr, or should have become clear to them, that the United States intended to reject their homestead claims to the classified lands. We agree with the district court that Lee, Eklund, and Carr "should have realized by 1961 that the United States had a conflicting claim to the portions of their homestead entries within the Power Site Classification[,] [because in] that year the [Bureau of Land Management] issued its survey covering the disputed lands, published notice of the survey in the Federal Register, and issued final decisions rejecting their homestead entries." *Lee*, 629 F.Supp. at 727. At the very latest, Lee, Eklund, and Carr should have known of the United States' conflicting claim to the disputed lands when they submitted their amended homestead applications in 1964. *See id.*

[5, 6] Lee, Eklund, and Carr argue that the Quiet Title Act's twelve-year statute of limitations should be deemed to have been equitably tolled by their reliance on the Secretary's representations, arguably incorrect,[3] that he was under no duty to remove the powersite classification. Statutes of limitation, however, are "triggered by [claimants'] knowledge of the transaction that constituted the alleged violation, not by their knowledge of the law." *Blanton v. Anzalone*, 760 F.2d 989, 992 (9th Cir.1985). A claim accrues as soon as a potential claimant either is aware or should be aware of the existence of and source of his injury, not when he knows or should know that the injury constitutes a legal wrong. A different rule would require insufficient diligence on the part of potential claimants. *See United States v. Kubrick*, 444 U.S. 111, 123–24, 100 S.Ct. 352, 360, 62 L.Ed.2d 259 (1979). Moreover, because the Quiet Title Act's statute of limitations "is a jurisdictional requirement, ... '[t]he government may not be equitably barred from asserting [it].'" *McIntyre*, 789 F.2d at 1411 (quoting *Burns v. United States*, 764 F.2d 722, 724 (9th Cir.1985)).

2) *Claims Against Eklutna, Inc. and Cook Inlet Region, Inc.*

The district court ruled that even though it lacked jurisdiction to consider the claims against the United States, it did not necessarily lack jurisdiction to consider the claims against the Native corporations. *Lee*, 629 F.Supp. at 727–28. The district court noted that "Congress passed the [Quiet Title Act] as a limited waiver of sovereign immunity for actions to acquire title from the federal government, ... not to insulate private parties who acquire federal lands, such as Eklutna and Cook Inlet Region, from bona fide actions to challenge their title." *Id.* at 727.

[7] The district court correctly stated the general rule. Ordinarily, the fact that a claimant is barred from proceeding against the United States by the jurisdictional provisions of the Quiet Title Act does not prevent the claimant from asserting title to disputed lands against non-federal parties. *See Block*, 461 U.S. at 291, 103 S.Ct. at 1822. *See also Economic Development and Industrial Corp. v. United States*, 720 F.2d 1, 4 (1st Cir.1983); *United States v. Gammache*, 713 F.2d 588, 592 (10th Cir.1983).

[8, 9] This case, however, is an exception to the general rule, because in this case the district court's lack of jurisdiction over the claims against the United States does require that the claims against the Native corporations also be dismissed. All of the relief that Lee, Eklund, and Carr seek requires the presence of the United States as a party. In order to challenge the validity of the Native corporations' patents to the disputed lands, Lee, Eklund, and Carr must be prepared to establish their own entitlement to the lands. "It is not sufficient for one challenging a patent to show that the patentee should not have received the patent; he must also show that he ... is entitled to it." *Kale v. United States*, 489 F.2d 449, 454 (9th Cir. 1973), *cert. denied*, 417 U.S. 915, 94 S.Ct. 2617, 41 L.Ed.2d 220 (1974). Lee, Eklund, and Carr can only properly establish their asserted entitlement to the disputed lands in direct proceedings against the United States. *See McIntyre v. United States*, 568 F.Supp. 1, 2–3 (D.Alaska 1983), *aff'd*, 789 F.2d 1408 (9th Cir.1986). The United States is therefore an indispensable party to this action. *See Nichols v. Rysavy*, 809 F.2d 1317, 1331–34 (8th Cir.1987) (United States held to be an indispensable party in a suit challenging the validity of fee patents issued to Native Americans); *Nichols v. Rysavy*, 610 F.Supp. 1245, 1253 (D.S.D.1985) (United States held to be an indispensable party because "the United States . . . issued the fee patent in question, thus setting the entire series of events in motion that resulted in the action."). *See also Nicodemus v. Washington Water Power Co.*, 264 F.2d 614, 615 (9th Cir.1959) (United States held to be an indispensable party in a suit concerning lands held in trust for Native Americans); *Cogo v. Central Council of Tlingit and Haida Indians*, 465 F.Supp. 1286, 1291 (D.Alaska 1979) (same). *See generally* Fed. R.Civ.P. 19(b). In so holding, we recognize that upon different facts the United States might not be an indispensable party.

It follows from the fact that the United States is an indispensable party to this action that the district court's lack of jurisdiction as to the claims against the United States requires the dismissal of the claims against the Native corporations. *See Johnson v. Chilkat Indian Village*, 457 F.Supp. 384, 388 (D.Alaska 1978) (action dismissed because the court did not have jurisdiction over the Chilkat Village Council, and any judgment arrived at in a proceeding to which the Village Council was not a party would be inadequate). *See also Nichols*, 809 F.2d at 1331–34.

CONCLUSION

Lee's, Eklund's, and Carr's claims against the United States all concern title to real property. The district court's exclusive jurisdiction to adjudicate claims against the United States to real property is the Quiet Title Act. Under section 2409a(e) of the Quiet Title Act, the United States' disclaimer of interest in the disputed lands in 1979 had the effect of depriving the district court of jurisdiction over the claims. Even if the disclaimer was ineffective, the claims would still be barred by the Quiet Title Act's twelve-year statute of limitations. The United States is an indispensable party to the present actions, because Lee, Eklund, and Carr can only properly establish their entitlement to the lands in direct proceedings against the United States. It therefore follows, as a direct consequence of the district court's lack of jurisdiction over the claims against the United States, that the claims against the two Native corporations must also be dismissed.

We express no opinion regarding the district court's interpretation of sections 14(g) and 22(b) of the Settlement Act, 43 U.S.C. §§ 1613(g) and 1621(b). We also express no opinion as to the district court's ruling that the Settlement Act preempts the common law in the area of disputes brought by third parties against Native corporations concerning lands conveyed under the Settlement Act.

AFFIRMED.

UNITED STATES of America, Petitioner/Appellee/Cross-Appellant,

v.

Frank S. ZOLIN, Respondent/Appellee,

and

Church of Scientology of California and Mary Sue Hubbard, Intervenors/Appellants/Cross-Appellees.

Nos. 85–6065, 85–6105.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Nov. 6, 1986.

Decided Feb. 9, 1987.

In connection with tax investigation, United States brought action to compel

3. *See Reeves v. Andrus*, 465 F.Supp. 1065, 1070 (D.Alaska 1979) (section 24 of the Power Act requires the Secretary "to revoke or modify the power site classification within a reasonable period" following a "no injury" determination by the Power Commission).

state court clerk to produce sealed documents. Church and taxpayer's wife intervened. The United States District Court for the Central District of California, Harry L. Hupp, J., ordered production of some, but not all documents. Intervenors appealed, and United States cross-appealed. The Court of Appeals, Farris, Circuit Judge, held that: (1) United States adequately established relevance of documents; (2) taxpayer waived privilege as to communications when he voluntarily delivered them to third party; and (3) crime-fraud exception to attorney-client privilege did not apply to recorded communications.

Affirmed.

1. Internal Revenue ⇐4490

Power of Internal Revenue Service to examine records in connection with tax investigation is broadly construed.

2. Internal Revenue ⇐4496

Government must demonstrate realistic expectation of relevance as to correctness of taxpayer's returns, rather than idle hope of relevance, before it will be allowed to examine records in connection with tax investigation.

3. Internal Revenue ⇐4496, 4505

Notwithstanding fact that exhibits sought by Internal Revenue Service related to years other than tax years under investigation, finding that exhibits might throw light on correctness of taxpayer's return information was not clearly erroneous where IRS agent declared that exhibits were relevant, and Government gave general descriptions of exhibits' contents.

4. Witnesses ⇐198(1)

Attorney-client privilege is to be strictly construed.

5. Witnesses ⇐222

Burden of demonstrating existence of evidentiary privilege rests on party asserting privilege.

6. Witnesses ⇐222

In order to establish applicability of attorney-client privilege to given communication, party asserting privilege must affirmatively demonstrate nonwaiver.

7. Witnesses ⇐219(1)

Voluntary delivery of privileged communication by holder of privilege to someone not party to privilege waives privilege.

8. Federal Courts ⇐776

Whether circumstances of delivery of privileged communication give rise to waiver of otherwise applicable privileges is mixed question of law and fact, and is reviewed de novo on appeal.

9. Internal Revenue ⇐4502

Notwithstanding that taxpayer did not explicitly grant third party access to attorney-client or marital communications, taxpayer waived privileges as to communications to third party by voluntary delivery of documents.

10. Internal Revenue ⇐4493

In determining whether Internal Revenue Service investigation is legitimate and in good faith, focal issue is whether investigation is motivated by legitimate tax purposes.

11. Internal Revenue ⇐4513

Finding that administrative summons served by Internal Revenue Service on state court clerk requesting documents relating to taxpayer's potential tax liability was issued in good faith was not abuse of discretion in view of testimony as to legitimate tax determination objectives of investigation.

12. Internal Revenue ⇐4515

District court order prohibiting Internal Revenue Service from delivering documents produced in response to summons to any other government agency unless criminal tax prosecution was sought or order of court was obtained was not abuse of discretion. 26 U.S.C.A. §§ 6103, 7421(a).

13. Internal Revenue ⇐4515

District court may condition enforcement of summons on Internal Revenue Service's agreeing to abide by disclosure restrictions. 26 U.S.C.A. §§ 6103, 7421(a).

14. Federal Courts ⇐776

District court's rulings on scope of attorney-client privilege involve mixed questions of law and fact, and are reviewable de novo.

15. Federal Courts ⇐870

Where relevant scope of attorney-client privilege is clear, and decision that district court must make is essentially factual, district court's rulings as to privilege are reviewed for clear error.

16. Witnesses ⇐206

"Common interest" rule protects communications made when nonparty sharing client's interests is present at confidential communication between attorney and client, even where nonparty has never been sued on matter of common interest and faces no immediate liability.

17. Witnesses ⇐206

Recorded communications between taxpayer and his attorneys were privileged where all nonlawyers present at meeting were employees of church run by taxpayer, as they had common interest in sorting out respective affairs of church and taxpayer.

18. Witnesses ⇐219(3)

Church did not waive its attorney-client privilege as to tapes of confidential communications where it inadvertently delivered tapes to third party, as inadvertent delivery was sufficiently involuntary and inadvertent to be inconsistent with theory of waiver.

19. Witnesses ⇐201(2)

Attorney-client privilege does not protect communications that further crime or fraud.

20. Witnesses ⇐222

Party seeking disclosure of recordings of privileged communications on ground that communications furthered crime or fraud had burden of making prima facie showing that communications were in furtherance of intended or present illegality.

Eric M. Lieberman and Edward Copeland, Michael Lee Hertzberg, New York City, and Donald C. Randolph, Los Angeles, Cal., for intervenors/appellants/cross-appellees.

Frederick Bennett, Co. Counsel, Los Angeles, Cal., for defendant/appellee.

John A. Dudeck, Jr., Tax Div., Dept. of Justice, Washington, D.C., and Charles H. Magnuson, Asst. U.S. Atty., Los Angeles, Cal., for petitioner/appellee/cross-appellant.

Appeal from the United States District Court for the Central District of California.

Before BROWNING, Chief Judge, GOODWIN and FARRIS, Circuit Judges.

FARRIS, Circuit Judge:

In July 1984, the Criminal Investigation Division of the IRS (Los Angeles District) began investigating L. Ron Hubbard's tax returns for the tax years 1979 through 1983. In October, the IRS served an administrative summons on the Clerk of the Los Angeles County Superior Court and requested that he produce certain documents relating to Hubbard's potential tax liability. (The Superior Court had obtained the documents in connection with an unrelated proceeding brought by the Church against a former member of the Church.) The Clerk willingly produced a number of documents, but refused to produce thirteen documents which had been ordered sealed by the Superior Court.

In January 1985, the Government initiated this action in an effort to compel the Clerk to produce the thirteen sealed documents. Shortly thereafter, the district court granted the motions to intervene which were brought by the Church and Mary Sue Hubbard. The Intervenors contended that each of the thirteen documents was either privileged, irrelevant, or both. They also argued that the summons was unenforceable because it was not issued pursuant to a "good faith" tax investigation.

Hearings were held in March and April. On April 30, 1985, the district court ruled

that eight of the documents—exhibits 4–D, 4–E, 4–F, 4–G, 5–C, 5–G, 5–I, and 6–B—were irrelevant, privileged, or both, and did not need to be produced. It ruled that five documents—exhibits 5–K, 5–L, 5–O, 5–P, and 6–O—should be produced, but prohibited the IRS from disclosing them to another governmental agency except in connection with a criminal tax prosecution or with the court's approval. The court further ruled that the Intervenors had failed to prove that the summons was not issued in "good faith."

The Intervenors filed timely notice of appeal on July 1, 1985. The Government filed timely notice of cross-appeal on July 15, 1985. The order appealed from is a final order which disposes of all claims of all parties. We have jurisdiction under 28 U.S.C. § 1291.

DISCUSSION

A. *Mootness*

On January 24, 1986, during the pendency of this appeal, L. Ron Hubbard died. The Intervenors argue that because Hubbard's death has foreclosed the possibility of any further investigation of Hubbard's potential criminal tax liability, this proceeding has become moot. We reject that argument for the reason stated in *United States v. Author Services*, 804 F.2d 1520, 1522 n. 1 (9th Cir.1986).

B. *Relevance of Exhibits 5–O, 5–P, and 6–O*

[1, 2] The IRS' power to examine records in connection with tax investigations is broadly construed. *See Liberty Financial Services v. United States*, 778 F.2d 1390, 1392 (9th Cir.1985); *De Masters v. Arend*, 313 F.2d 79, 87 (9th Cir.1963). The relevance of such evidence depends on whether it might throw light on the correctness of a taxpayer's returns. *United States v. Goldman*, 637 F.2d 664, 667 (9th Cir.1980). The Government must demonstrate a "realistic expectation" of relevance, rather than an "idle hope" of relevance. *Id.* (quoting *United States v. Harrington*, 388 F.2d 520, 524 (2d Cir.1968)).

The Government bases its claim that the three exhibits are relevant on the declaration of Agent Petersell, in which Petersell stated:

> I have read the Petition to Enforce Internal Revenue Service Summons. Each of the items listed ... is relevant to the investigation of L. Ron Hubbard in one or more of the following respects:
>
> A. Determining the extent to which income from the Church of Scientology inured to the benefit of L. Ron Hubbard.
>
> B. Determining whether L. Ron Hubbard conspired with others to impair and impede the Internal Revenue Service in the administration of the tax laws.
>
> C. Determining whether any violations of the Internal Revenue laws were done willfully with intent to evade tax.

The Government's other evidence of relevancy consists of three terse descriptions of the documents' contents in the petition for enforcement of the summons:

00000 (5–O)	LRH note regarding the Mayor of Clearwater, Florida, 22 March 1978.
PPPPP (5–P)	LRH Statement regarding money from Scientology, 16 Feb. 1978.
000000 (6–O)	LRH handwritten note regarding the Fair Game policy.

The record does not indicate the Government's sources for this information.

[3] While the Government might have made a better showing, the district court did not clearly err in concluding that Petersell's declaration, when coupled with the general descriptions of the documents in the petition to enforce the summons, was sufficient to establish the relevance of the documents. We do not ignore our statement in *Goldman:*

> The Government's burden, while not great, is also not non-existent. The Government appears to argue that the mere assertion of relevance by [an IRS agent] satisfied that burden. Even to the extent this might be true for records concerning the tax years being examined, relevance is not so clear when records for other years are sought.

637 F.2d at 667. Notwithstanding the fact that exhibits 5–O, 5–P, and 6–O all relate to years other than the tax years under investigation, we are satisfied that the district court, after balancing the indicia of relevancy against the impossibility of fully knowing the documents' contents before an actual review, did not clearly err in determining that the documents "might throw light" on the correctness of L. Ron Hubbard's return information.

C. *Waiver of Privilege As to Exhibits 5–K and 5–L*

The Intervenors do not contest on appeal the relevance of exhibits 5–K and 5–L. Instead, they contend that the district court erred in ruling that privileges which might otherwise have applied to the two documents were waived by a voluntary delivery of the documents to Gerald Armstrong. In addition, they argue that the district court erred when it concluded that exhibit 5–L would not be protected by the attorney-client privilege even in the absence of waiver because the affidavit of Hubbard's former attorney was too vague and conclusory to validly assert the privilege.

[4–6] The attorney-client privilege is to be strictly construed. *Weil v. Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18, 24 (9th Cir.1981). *See* 8 J. Wigmore, *Evidence* § 2291 at 554 (McNaughton rev. 1961). The logic behind the strict construction of the attorney-client privilege applies with equal force to the marital communications privilege: like the attorney-client privilege, the marital communications privilege is "an obstacle to the investigation of the truth.... [that] ought to be strictly confined within the narrowest possible limits consistent with the logic of its principle." *Id.* The burden of demonstrating the existence of an evidentiary privilege rests on the party asserting the privilege. *See United States v. Gann*, 732 F.2d 714, 723 (9th Cir.1984) (attorney-client privilege); *Weil*, 647 F.2d at 25 (evidentiary privileges generally). In order to establish the applicability of the attorney-client privilege to a given communication, the party asserting the privilege must affirmatively demonstrate non-waiver. *See id.*; *United States v. Landof*, 591 F.2d 36, 38 (9th Cir. 1978).

[7, 8] The voluntary delivery of a privileged communication by a holder of the privilege to someone not a party to the privilege waives the privilege. *See Clady v. County of Los Angeles*, 770 F.2d 1421, 1433 (9th Cir.1985) (the voluntary disclosure of a privileged attorney-client communication constitutes waiver); *United States v. McCown*, 711 F.2d 1441, 1452–53 (9th Cir.1983) (the marital communications privilege is inapplicable to communications not intended to remain confidential); *Weil*, 647 F.2d at 24 (the voluntary disclosure of a privileged attorney-client communication constitutes waiver). Moreover, when the disclosure of a privileged communication reaches a certain point, the privilege may become extinguished even in the absence of a wholly voluntary delivery. *See In re Sealed Case*, 676 F.2d 793, 818 (D.C.Cir. 1982) ("Any disclosure inconsistent with maintaining the confidential nature of the attorney-client relationship waives the privilege."). Whether the circumstances of the delivery of exhibits 5–K and 5–L to Armstrong gave rise to a waiver of the otherwise applicable privileges is a mixed question of law and fact that we review *de novo*. *See United States v. McConney*, 728 F.2d 1195, 1199–1204 (9th Cir.1984) (en banc).

[9] The district court held that all privileges potentially applicable to exhibits 5–K and 5–L were waived by a voluntary delivery of the documents to Gerald Armstrong. We agree. The Intervenors argue that the delivery could not have been voluntary since the correspondence between Armstrong and Hubbard contains no express indication that Armstrong intended to, or had Hubbard's permission to collect communications between Hubbard and his wife or between Hubbard and his attorneys.

Although Hubbard did not explicitly grant Armstrong access to attorney-client

or marital communications, Hubbard did, in a memorandum to Armstrong, grant Armstrong general permission to collect documents relevant to the proposed biography of Hubbard. The Intervenors' only argument in support of non-waiver is that Hubbard did not specifically grant Armstrong access to attorney-client and marital communications. More is required.

Since the attorney-client privilege which might otherwise have attached to exhibit 5–L was waived, we need not consider whether the attorney-client privilege was validly asserted by Hubbard's former attorney.

D. *Limited Evidentiary Hearing*

We review for abuse of discretion. *See United States v. Stuckey*, 646 F.2d 1369, 1373 (9th Cir.1981). *See generally Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984) (a district court's decisions relating to discovery matters are reviewed for abuse of discretion).

[10] The purpose of the limited evidentiary hearing was to determine whether the summons enforcement proceeding was legitimate and in "good faith," rather than merely camouflage for an ulterior non-tax motive. The "good faith" standard seeks to prevent the IRS from becoming an information-gathering agency for other governmental agencies. *See United States v. LaSalle National Bank*, 437 U.S. 298, 317, 98 S.Ct. 2357, 2367, 57 L.Ed.2d 221 (1978); *Stuckey*, 646 F.2d at 1373. The task is to identify " 'those rare cases where bald allegations of harassment or improper purpose can be substantiated.' " *Author Services*, 804 F.2d at 1523 (quoting *United States v. Church of Scientology of California*, 520 F.2d 818, 824 (9th Cir.1975)). The focal issue is whether an IRS investigation is motivated by legitimate tax purposes. *See United States v. Powell*, 379 U.S. 48, 57–58, 85 S.Ct. 248, 254–55, 13 L.Ed.2d 112 (1964). The district court may properly limit evidentiary hearings on the "good faith" issue to prevent a frustration of legitimate Government objectives. *Church of Scientology*, 520 F.2d at 823–25.

[11] The Intervenors argue that the district court improperly limited its inquiry to the issue of whether the summons itself was issued in "good faith," and ignored the larger issue of whether the overall investigation was in "good faith." We reject that argument. At the hearing, C. Phillip Xanthos, the Branch Chief of the IRS Criminal Investigation Division (Los Angeles District), specifically testified to the legitimate tax-determination objectives of the investigation. This and other testimony was sufficient to support the district court's finding that the summons was issued in "good faith." *See LaSalle National Bank*, 437 U.S. at 317, 98 S.Ct. at 2368. *See also Stuckey*, 646 F.2d at 1376; *United States v. Zack*, 521 F.2d 1366, 1368–69 (9th Cir.1975).

E. *Restrictions on IRS Disclosure of the Summoned Documents*

The district court ordered that "the documents produced in response to the summons shall not be delivered to any other government agency by the IRS unless criminal tax prosecution is sought or an Order of Court is obtained." We review the district court's order for abuse of discretion. *See United States v. Columbia Broadcasting System*, 666 F.2d 364, 368 (9th Cir.1982).

The Government argues that the district court's order conflicts with the disclosure provisions of 26 U.S.C. § 6103. Those provisions, the Government suggests, are the exclusive limitations upon IRS disclosure of return information. In addition, the Government argues that the order represents an improper attempt to enjoin the IRS from obeying a duly enacted federal law.

[12, 13] We recently rejected this argument in *Author Services*, and held that a district court's order restricting the IRS' ability to disclose summoned materials to other governmental agencies, "[r]ather than being an abuse of discretion, . . . [could] be a wise exercise of control." *Author Services*, 804 F.2d at 1526. The district court's order in this case allows the court to monitor the IRS' use of the summoned documents. This is an appropriate exercise of the district court's discretion: "It is the court's process which is invoked to enforce the administrative summons and a court may not permit its process to be abused." *Powell*, 379 U.S. at 58, 85 S.Ct. at 255. *See S.E.C. v. ESM Government Securities, Inc.*, 645 F.2d 310, 316–17 (5th Cir.1981). A district court may, when appropriate, condition enforcement of a summons on the IRS' agreeing to abide by disclosure restrictions. *Author Services*, 804 F.2d at 1525 (citing *United States v. Texas Heart Institute*, 755 F.2d 469, 481 (5th Cir.1985)).

The Intervenors also argue that the district court's order violates 26 U.S.C. § 7421(a) (the "Anti-Injunction Act"), because it has the effect of enjoining the IRS from disclosing the summoned tax information. We reject the argument for the reasons stated in *Author Services*, 804 F.2d at 1526.

F. *Exhibit 5–C ("the Tapes")*

[14, 15] The district court's rulings on the scope of the attorney-client privilege involve mixed questions of law and fact, and are reviewable *de novo*. *See McConney*, 728 F.2d at 1202. Where the relevant scope of the attorney-client privilege is clear and the decision that the district court must make is essentially factual, however, the district court's rulings as to the privilege are reviewed for clear error. *Id.* at 1200.

[16] The Government contends that the district court erred in finding that the "common interest" rule covered the tapes. The "common interest" rule protects communications made when a nonparty sharing the client's interests is present at a confidential communication between attorney and client. The paradigm case is where two or more persons subject to possible indictment arising from the same transaction make confidential statements that are exchanged among their attorneys. *See Hunydee v. United States*, 355 F.2d 183, 185 (9th Cir.1965).

The Government is incorrect, however, in arguing that the "common interest" rule is limited to such a case. Even where the non-party who is privy to the attorney-client communications has never been sued on the matter of common interest and faces no immediate liability, it can still be found to have a common interest with the party seeking to protect the communications. *See Burlington Industries v. Exxon Corp.*, 65 F.R.D. 26, 44–45 (D.Md.1974); *Stanley Works v. Haeger Potteries, Inc.*, 35 F.R.D. 551, 554–55 (N.D.Ill.1964).

[17] The district court found that the parties present at the meetings recorded on the tapes "had a common interest" in sorting out the respective affairs of the Church and Mr. Hubbard. We agree. All of the non-lawyers present at the meeting were employees of the Church.

[18] The Government also challenges the district court's finding that the Church did not waive its attorney-client privilege when it inadvertently delivered the tapes to Armstrong. (Hubbard's personal secretary gave Armstrong the tapes under the mistaken impression that they were blank.) In *Transamerica Computer Co., Inc. v. International Business Machines, Corp.*, 573 F.2d 646 (9th Cir.1978), we held that whereas a waiver of the attorney-client privilege occurs when a holder of the privilege voluntarily discloses the privileged matter, no waiver occurs if the holder has no opportunity to claim the privilege or if the holder was erroneously compelled to disclose the privileged matter. *Id.* at 651. The secretary's delivery of the tapes to Armstrong was sufficiently involuntary and inadvertent as to be inconsistent with a theory of waiver.

[19, 20] The Government challenges the district court's ruling that the "crime-fraud" exception to the attorney-client privilege did not apply to the tapes. The attorney-client privilege does not protect communications that further a crime or fraud. *See United States v. Hodge and Zweig*, 548

F.2d 1347, 1354 (9th Cir.1977). The Government had the burden of making a prima facie showing that the attorney-client communications recorded on the tapes were in furtherance of an intended or present illegality. *Id.* We agree with the district court's conclusion that the Government failed to satisfy this burden.

The Intervenors argue that the Government's evidence of crime or fraud must come from sources independent of the attorney-client communications recorded on the tapes. In support of this argument, they cite *United States v. Shewfelt*, 455 F.2d 836 (9th Cir.1972). In *Shewfelt*, we said that "before the privileged status of [attorney-client] communications can be lifted, the government must first establish a prima facie case of fraud *independently* of said communications." *Id.* at 840 (emphasis added). Notwithstanding *Shewfelt*, the Government argues that in assessing the applicability of the "crime-fraud" exception to the tapes the district court should have considered evidence of the contents of the tapes which the Government presented to the court.

Shewfelt's independent evidence requirement has been strongly criticized. In *In re Berkley and Co., Inc.*, 629 F.2d 548, 553 n. 9 (8th Cir.1980), the Eighth Circuit observed that the two cases cited in *Shewfelt*, assertedly in support of the independent evidence requirement, in fact simply state that a party seeking disclosure under the "crime-fraud" exception must make a prima facie showing of crime or fraud in order to shift the burden of showing the inapplicability of the exception to the party resisting disclosure.

In the fourteen years that have passed since *Shewfelt* was decided, only one court has cited it as authority for the independent evidence requirement. *See Kockums Industries Limited v. Salem Equipment, Inc.*, 561 F.Supp. 168, 171 (D.Or.1983). By contrast, a number of courts have rejected the *Shewfelt* position. *See, e.g., In re Sealed Case*, 676 F.2d at 815; *In re Special September 1978 Grand Jury*, 640 F.2d 49, 59 (7th Cir.1980); *In re Berkley*, 629 F.2d at 553 n. 9; *Coleman v. American Broadcasting Companies, Inc.*, 106 F.R.D. 201, 207 n. 9 (D.D.C.1985); *United States v. King*, 536 F.Supp. 253, 262 (C.D. Cal.1982).

In *Hodge and Zweig*, we discussed the "crime-fraud" exception at length without ever referring to *Shewfelt*. 548 F.2d at 1354–55. Instead, we referred repeatedly to *United States v. Friedman*, 445 F.2d 1076 (9th Cir.1971), a decision which implicitly recognized that a district court may examine the disputed communications themselves in order to determine the applicability of the "crime-fraud" exception. *Id.* at 1354.

In this case, the communications recorded on the tapes appear to be the Government's best evidence establishing the applicability of the "crime-fraud" exception. This is not surprising, since the illegal advice allegedly given by Church attorneys to Church officials is an integral part of the intended illegality that the Government seeks to establish. The court's observation in *King* is pertinent: "[S]ince the illegal advice is usually given in the attorney-client setting, applying *Shewfelt* to such cases would, in most instances, simply serve to insulate dishonest attorneys from prosecution for obstruction of justice." *King*, 536 F.Supp. at 262.

In *King*, the court speculated that "the independence test set forth in *Shewfelt* does not appear to be the law in the Ninth Circuit." *Id.* We cannot agree. Whatever the merits of the criticisms that have been leveled against *Shewfelt*'s independent evidence requirement, we are bound to adhere to our holding in *Shewfelt* unless and until it is reversed by an *en banc* panel of this court. *See United States v. Spilotro*, 800 F.2d 959, 967 (9th Cir.1986); *Atonio v. Wards Cove Packing Co., Inc.*, 768 F.2d 1120, 1132 n. 6 (9th Cir.1985).

The Government's independent evidence of intended illegality consists primarily of: 1) Agent Petersell's Supplemental Declaration of March 8, 1985, in which Petersell stated that his discussions with Gerald Armstrong had given him reason to believe that the communications recorded on the tapes focused generally on the intentional violation of the tax laws; and 2) Petersell's Supplemental Declaration of March 15, 1985, in which Petersell stated that his discussions with three other former Church employees had given him reason to believe that the communications recorded on the tapes specifically focused on i) a proposed scheme whereby the Church's cash transfers to Hubbard would be disguised as payments for services rendered (allegedly to insulate Hubbard from tax liability and to protect the Church's tax-exempt status), and ii) a proposed scheme whereby Hubbard would be able to control royalty income derived from the "Trademark Trust" (a trust that was created to manage Hubbard's various Scientology-related and other trademarks) without that control being traceable to him.

We agree with the district court that this evidence, while not altogether insubstantial, is not sufficient to make out the requisite prima facie showing of intended illegality.

AFFIRMED.

SOCIALIST WORKERS PARTY; Leroy Watson; Louise Pittell; and Dean Peoples, Plaintiffs-Appellants,

v.

SECRETARY OF STATE Of the STATE OF WASHINGTON, Ralph Munro, Defendant-Appellee.

No. 84-3806.

United States Court of Appeals, Ninth Circuit.

Feb. 9, 1987.

Daniel H. Smith, Seattle, Wash., for plaintiffs-appellants.

James Johnson, Sp. Asst. Atty. Gen., Olympia, Wash., for defendant-appellee.

Before BROWNING, Chief Judge, GOODWIN and SKOPIL, Circuit Judges.

Prior report: — U.S. —, 107 S.Ct. 533, 93 L.Ed.2d 499.

ORDER

This cause is remanded to the district court for further proceedings in conformity with the Supreme Court's opinion in the above entitled case.

Juan CERRILLO-PEREZ and Magdalena Cerrillo-Garcia, Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE, Respondent.

No. 85-7681.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Sept. 4, 1986.

Decided Feb. 10, 1987.

As Amended March 12, 1987.

Aliens sought review of decision by Board of Immigration Appeals upholding immigration judge's denial of their applications for the suspension of deportation. The Court of Appeals, Reinhardt, Circuit Judge, held that Board of Immigration Appeals' failure to explain why it refused or failed to consider alternative hardship to alien parents and their citizen children of separation, upon parents' deportation, on ground that citizen children were of tender age so that, in all likelihood, they would go with parents to Mexico, upon their parents' deportation, required remand for considera-

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CHURCH OF SCIENTOLOGY INTERNATIONAL 4751 Fountain Avenue Los Angeles, CA 90029 Plaintiff, v. BENT CORYDON 2390 Prenda Riverside, CA 92504 Defendant.	)	CA 8048-87 Civil Action No. _____

VERIFIED COMPLAINT FOR DAMAGES FOR DEFAMATION

Plaintiff, by its attorneys, for its complaint against defendant, alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for damages caused by defendant's publication over radio station WNTR of false and defamatory statements of and concerning plaintiff.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court is founded on D.C. Code (1981 Edition) Section 11-921 and Section 13-423. Venue is based upon the origin of publication and publication in the District of Columbia.

III. PARTIES

3. Plaintiff Church of Scientology International, is a not-for-profit religious corporation duly organized under the laws of the State of California. Plaintiff conducts its activities throughout the United States including the District of Columbia, and is the Mother Church of the Churches of Scientology in the United States. Since 1981, Rev. Heber Jentzsch has been the

president of the Church of Scientology International and has represented plaintiff as its president throughout the United States, including the District of Columbia. Plaintiff maintains a permanent office in Washington, D.C.

4. Defendant is the author of a book entitled "L. Ron Hubbard Messiah or Madman?", published by Lyle Stuart, Inc. (herein "book").

IV. CAUSE OF ACTION

5. On August 17, 1987, defendant appeared on radio station WNTR as a guest to promote his book on a show known as "Battleline."

6. WNTR broadcasts the "Battleline" show throughout the greater Washington, D.C. metropolitan area and in other areas including Long Island, New York and North Carolina. The show of August 17, 1987, and the particular defamatory statements alleged in paragraph 7 below, were heard throughout those areas and by members of the public who knew and/or understood that Heber Jentzsch is the president of plaintiff Church.

7. While appearing on the "Battleline" show on August 17, 1987, in Washington, D.C., defendant published the following false and defamatory statements of and concerning plaintiff:

> Well for one thing well after I had started writing the book a fellow arrived about 6 foot 4 with a leather jacket on and leather gloves, and very strong looking fellow and he came into the place where I work and he was looking for me all over the building. He failed to find me, I happened to be off in another room I just happened to be hiding (inaudible) from him and he finally settled on somebody who's a good friend of mine and he said that Bent Corydon isn't here you'll do and he started smacking him around and yelling that he stood in the way of L. Ron Hubbard's bridge. Now just last week, this was over a year ago, just last week, not the same person, but a fellow similar description, a certain (inaudible) a leather jacket, a black leather gloves the works, followed me out of CNN-TV station and began to follow me out to the parking lot. This is subsequent to the President of the

> Church, Heber Jentzsch, pointing at me from outside this fellow went immediately straight towards me. I went back into the building and stood next to the guard. This fellow came in and leaned over me and said something intimidating, I don't remember the exact words.

8. By the aforesaid defamatory statements alleged in paragraph 7 above, defendant intended to convey and did convey to the listening audience the following false and defamatory meanings of and concerning plaintiff:

A. Plaintiff engaged in criminal conduct in that it directed and caused a physical assault on a friend of Corydon's;

B. Plaintiff engaged in criminal conduct in that it directed and caused a threat of physical assault on Corydon;

C. Plaintiff directed and caused a friend of Corydon's to be physically assaulted;

D. Plaintiff directed and caused Corydon to be threatened with physical harm;

E. Plaintiff directed that Corydon be physically assaulted;

F. Corydon would have been physically assaulted pursuant to plaintiff's directions if he had not found a guard to stand next to.

9. The audience that heard defendant's aforesaid defamatory statements of and concerning plaintiff understood said statement to have the false and defamatory meaning alleged in paragraph 8 herein.

10. The reasonable meanings of the aforesaid defamatory statements of and concerning plaintiff were the false and defamatory meaning alleged in paragraph 8 herein.

11. The aforesaid defamatory statements were understood by the audience that heard them to be of and concerning activities and conduct of the plaintiff in that said audience knew that plaintiff's President was and is Heber Jentzsch, who was specifically referred to by

defendant as being involved as President of the Church in the alleged actions charged by defendant. Members of the audience further knew and understood that plaintiff had described and alleged incidents as occurring in an area of California where defendant has its principal offices.

12. By the aforesaid defamatory statements and by their false and defamatory meanings as alleged herein, defendant charged plaintiff with criminal, illegal and unlawful conduct, with conduct entirely improper and contrary to the standards of a religious organization and with malicious and unethical conduct.

13. Plaintiff's reputation, credibility and ability to function as a Church require that it be viewed as an ethical and moral institution that does not engage in either criminal or violent conduct.

14. Defendant knew that the aforesaid defamatory statements set forth above were false and/or published them in reckless disregard of their truth or falsity.

15. The aforesaid defamatory statements set forth above were published by defendant acting in a grossly irresponsible manner in failing to determine their truth or falsity, in failing to follow any responsible standards and practices in determining their truth or falsity, and in knowing that he did not know whether the statements were true.

16. The aforesaid defamatory statements set forth above were published by defendant acting with culpable negligence and in reckless disregard of and indifference to plaintiff's rights and to their truth or falsity, and the damaging consequences that publication of such statements could cause.

17. The aforesaid defamatory statements are utterly false.

18. By reason of the aforesaid acts of defendant, plaintiff has suffered serious damage to its good name and reputation, and has been injured in its ability to conduct

religious affairs and to advance and disseminate the principals and practices of Scientology.

19. Plaintiff has sent to defendant a written request to retract and correct the statements in paragraph 7 above pursuant to California Civil Code Section 48(a). The defendant has not as of this time issued any retraction, nor will he retract in any regard.

20. As a result, plaintiff has suffered actual damages in an amount in excess of $100,000.00.

21. By virtue of defendant's conduct, plaintiff is entitled to recover punitive damages from defendant in an amount in excess of $200,000.00.

WHEREFORE, plaintiff demands judgment against defendant, as follows:

(a) in an amount no less than $100,000.00 in actual damages together with interest thereon;

(b) in an amount no less than $200,000.00 in punitive damage;

(c) the costs and disbursement of this action including reasonable allowances for counsel fees and other lawful expenses; and

(d) such other further relief as the Court may find just and proper under the circumstances.

Plaintiff herby demands a trial by jury of twelve.

DATED: Washington, D.C.
September 15, 1987

District of Columbia, ss:

Sylvia Stanard, being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

Sylvia Stanard
On behalf of Plaintiff,
Church of Scientology International

Subscribed and sworn to before me this 18th day of September, 1987.

Helen P. Lowenstein
Notary Public

My Commission Expires Jan. 1, 1990

A. P. Bisceglie

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Co-Counsel for Plaintiff

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CHURCH OF SCIENTOLOGY INTERNATIONAL 4751 Fountain Avenue Los Angeles, CA 90029 Plaintiff, v. BENT CORYDON 2390 Prenda Riverside, CA 92504 Defendant.	CA 8048-87 Civil Action No._____

PRAECIPE FOR APPEARANCE PRO HAC VICE

I, JONATHAN W. LUBELL respectfully submit this praecipe pursuant to Rule 101, District of Columbia Superior Court rules, for purposes of entering an appearance on behalf of Plaintiff in the above captioned case.

I am a member in good standing of the bar of the State of New York, and the United States Supreme Court, and in the United States Court of Appeal for the District of Columbia, Second and Ninth Circuits. On one previous occasion I sought to appear in the Superior Court under this Rule and my application was granted.

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(212) 683-5000

Co-Counsel for Plaintiff

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Suite 400
Washington, D.C. 20036
(202) 778-1160

Local Counsel of Record for Plaintiff

(VERIFICATION — 446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

_____

in the above entitled action or proceeding; I have read the foregoing _____

_____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

_____

_____

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ (date) at _____ (place) California

_____ (Signature)

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

P.O. Box 511, Pacific Palisades, Ca. 90272

On November 7 19 88 I served the within Reply to Opposition to Unseal

on the Parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at _____ addressed as follows:

Eric M. Lieberman
Rabinowitz, Boudin, Standard
Krinsky & Lieberman, P.C.
740 Broadway, Fifth Floor
New York NY 10003-9518

Timothy Bowles
Bowles & Moxon
6255 Sunset BLvd. Suite 2000
Hollywood CA 90028

Michael L. Hertzberg
740 Broadway, Fifth Floor
New York, NY 10003-9518

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 11/7/88 (date) at Los Angeles (place) California

Felicia Lawsbury

(VERIFICATION — 446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

_____

in the above entitled action or proceeding; I have read the foregoing _____

_____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

_____

_____

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ (date) at _____ (place), California

_____ (Signature)

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

P.O. Box 511, Pacific Palisades, Ca. 90272

On December 22, 19 88 I served the within RESPONSE TO WRIT OF

SUPERSEDEAS

on the Parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at _____ addressed as follows:

see attached list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12/22/88 (date) at Los Angeles (place), California

Felicia Fainsbury

Proof of Service

Mr. Kendrick Moxon
Mr. Timothy Bowles
6255 Sunset Boulevard
Suite 2000
Los Angeles CA 90028

Mr. Eric Lieberman
Rabinowitz, Boudin, Standard,
Krinsky, & Lieberman, P.C.
740 Broadway at Astor Place
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Ms. Toby Plevin
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Clerk of Superior Court
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Michael Flynn
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